

OPEN MEETING ITEM

COMMISSIONERS
GARY PIERCE - Chairman
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PAUL NEWMAN
BRENDA BURNS

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ARIZONA CORPORATION COMMISSION

DATE: AUGUST 22, 2011

DOCKET NO.: W-01521A-09-0121

TO ALL PARTIES:

Enclosed please find the recommendation of Administrative Law Judge Belinda A. Martin. The recommendation has been filed in the form of an Opinion and Order on:

SUE JUAN WATER COMPANY (SALE OF ASSETS/CANCEL CC&N)

Pursuant to A.A.C. R14-3-110(B), you may file exceptions to the recommendation of the Administrative Law Judge by filing an original and thirteen (13) copies of the exceptions with the Commission's Docket Control at the address listed below by 4:00 p.m. on or before:

AUGUST 31, 2011

The enclosed is NOT an order of the Commission, but a recommendation of the Administrative Law Judge to the Commissioners. Consideration of this matter has tentatively been scheduled for the Commission's Open Meeting to be held on:

SEPTEMBER 6, 2011 and SEPTEMBER 7, 2011

For more information, you may contact Docket Control at (602) 542-3477 or the Hearing Division at (602)542-4250. For information about the Open Meeting, contact the Executive Director's Office at (602) 542-3931.

DOCKETED

AUG 22 2011

DOCKETED BY


ERNEST G. JOHNSON
EXECUTIVE DIRECTOR

1200 WEST WASHINGTON STREET; PHOENIX, ARIZONA 85007-2927 / 400 WEST CONGRESS STREET; TUCSON, ARIZONA 85701-1347

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1 **BEFORE THE ARIZONA CORPORATION COMMISSION**

2
3 **COMMISSIONERS**

4 GARY PIERCE - Chairman
5 BOB STUMP
6 SANDRA D. KENNEDY
7 PAUL NEWMAN
8 BRENDA BURNS

9 IN THE MATTER OF THE APPLICATION
10 OF SUE JUAN WATER COMPANY FOR
11 CANCELLATION OF ITS CERTIFICATE
12 OF CONVENIENCE AND NECESSITY
13 AND TRANSFER OF ITS UTILITY
14 ASSETS TO THE CITY OF BENSON.

DOCKET NO. W-01521A-09-0121

DECISION NO. _____

15 **OPINION AND ORDER**

16 DATE OF HEARING: February 24, 2011

17 PLACE OF HEARING: Tucson, Arizona

18 ADMINISTRATIVE LAW JUDGE: Belinda A. Martin

19 APPEARANCES: Tammy Curtis, on behalf of Sue Juan Water Company;
20 Michael Massee, City Attorney, on behalf of the City of
21 Benson; and
22 Ayesha Vohra, Staff Attorney, Legal Division, on behalf
23 of the Utilities Division of the Arizona Corporation
24 Commission.

25 **BY THE COMMISSION:**

26 Having considered the entire record herein and being fully advised in the premises, the
27 Arizona Corporation Commission ("Commission") finds, concludes, and orders that:

28 * * * * *

FINDINGS OF FACT

Procedural History

1. On March 16, 2009, Sue Juan Water Company ("Sue Juan" or "Company"), filed an application with the Commission for authority to transfer its assets and operations to the City of Benson ("City") and to cancel the Company's Certificate of Convenience and Necessity ("CC&N") ("Application").

1 2. On April 1, 2009, Sue Juan filed an Affidavit of Publication indicating that notice of
2 the Application was published on March 20, 2009, in the *San Pedro Valley News-Sun Arizona Range*
3 *News*.

4 3. On April 14, 2009, the Commission's Utilities Division ("Staff") filed an Insufficiency
5 Letter and Data Requests.

6 4. On October 27, 2010, the City filed responses to Staff's data requests.

7 5. On November 16, 2010, Staff filed its Sufficiency Letter stating that the Application
8 was sufficient pursuant to the Arizona Administrative Code.

9 6. On November 30, 2010, a Procedural Order was filed setting the matter for hearing on
10 February 24, 2011.

11 7. On January 7, 2011, Sue Juan filed a Notice of Mailing, stating that the Company
12 mailed notice of the hearing to its customers on December 15, 2010. The Company also filed and
13 Affidavit of Publication indicating that notice of the hearing was published on December 29, 2010, in
14 the *San Pedro Valley News-Sun Arizona Range News*. No customers filed comments with the
15 Commission in response to the notices.

16 8. On January 13, 2011, Staff filed its Staff Report recommending approval of the
17 Application.

18 9. On February 24, 2011, the hearing convened as scheduled. Ms. Curtis testified on
19 behalf of Sue Juan. Brad Hamilton, City Engineer and Public Works Director for the City of Benson,
20 testified on behalf of the City. Blessing Chukwu and Del Smith testified on behalf of Staff. No
21 members of the public provided comment at the hearing.

22 10. On February 24, 2011, Sue Juan filed a copy of the Special Warranty Deed, deeding
23 the Company's property to the City, and filed a duplicate copy of the Special Warranty Deed on
24 March 21, 2011.

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1 **Background**

2 11. Sue Juan is a sole proprietorship owned by Chester C. Antonick, which provides water
3 utility service to approximately 40 customers within Benson's city limits.¹ The Company's original
4 CC&N was granted in Decision No. 30027 (December 24, 1956).

5 12. Sue Juan filed its Application on March 16, 2009, requesting Commission authority to
6 sell the Company's assets to the City.² The City approved the purchase of the assets on January 26,
7 2009, for \$30,000,³ and Sue Juan deeded the Company's real property and physical assets to the City
8 pursuant to a Special Warranty Deed signed by Chester C. Antonick on February 19, 2009, and
9 recorded with the Cochise County Recorder's Office on February 24, 2009.

10 13. The City, in its capacity as a municipal corporation providing water utility service, is
11 exempt from Commission regulation pursuant to Article XV, Section 2 of the Arizona Constitution.

12 14. According to information provided by the City, Sue Juan's certificated area is within,
13 and completely surrounded by, Benson's city limits. The City had previously constructed water lines
14 looping around the Sue Juan system because of concerns about sufficient fire flows.⁴

15 15. Staff noted that the water produced by the Company's wells had arsenic levels of 27
16 parts per billion and that the cost of constructing an arsenic treatment system for approximately 40
17 connections would be prohibitive.⁵ The City stated that it has a supply of low arsenic water and it
18 made sense for the City to take over service in Sue Juan's certificated area.⁶

19 16. Mr. Hamilton testified that the purchase process began over a year earlier when the
20 City conducted an engineering study to evaluate the system and determine what the City would need
21 to do in order to serve Sue Juan's customers.⁷ After completing the study, the City sent letters to Sue

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23 ¹ There is conflicting information about the number of customers served by Sue Juan. According to the Staff Report,
24 there were 76 customers, (Staff Report, page 1.) but at hearing, Staff stated there were approximately 40 customers.
(Hearing Transcript at page 20. (Hereinafter, "Tr. at ____".)) The City's witness, Brad Hamilton, stated there were 43
customers. (Tr. at 15.)

25 ² Sue Juan's counsel, Ronald J. Newman, filed the Application on behalf of the Company, but according to Ms. Curtis,
Mr. Newman was in Afghanistan and unable to continue representation. Ms. Curtis is Mr. Antonick's daughter and
worked with her father at the Company and handled the sale of the assets to the City. Tr. at 8-9.

26 ³ Application, City of Benson Resolution No. 7-2009; Purchase Agreement between Chester C. Antonick, DBA Sue Juan
Water Company, dated January 16, 2009, Section 3.1.

27 ⁴ City's Responses to Data Requests filed October 28, 2010, page 2.

28 ⁵ Tr. at 20.

⁶ City's Responses to Data Requests filed October 28, 2010, page 2.

⁷ Tr. at 14.

1 Juan's customers notifying them that the City was considering buying the system and would conduct
 2 a public meeting for the customers to provide input about the purchase.⁸ Mr. Hamilton testified that
 3 approximately 15 customers attended the meeting and were provided an opportunity to learn about,
 4 and comment on, the City's provision of water service. According to Mr. Hamilton, at the March 13,
 5 2008, meeting, customers were advised that the City's rates were higher than Sue Juan's, but the
 6 customers' response to the City's provision of water service was very positive.⁹ After the purchase,
 7 the City sent letters dated April 6, 2009, to the customers stating that water service was now being
 8 supplied by the City.¹⁰

9 17. Mr. Hamilton testified that, after acquiring the system, the City replaced all the meters,
 10 updated the system to improve pressure and provided new taps to commercial customers, among
 11 other things.¹¹

12 18. Staff noted that Sue Juan's system contained two wells, two booster pumps and three
 13 pressure tanks and the distribution system. According to the Staff Report, the City ultimately planned
 14 to cap off the wells. According to Mr. Hamilton, the City planned to completely cap off Sue Juan's
 15 wells in the 2011-2012 fiscal year, and would begin the process after July 1, 2011.¹²

16 19. Mr. Hamilton testified that the City believes the transfer of assets from Sue Juan to the
 17 City is in the public interest.¹³

18 20. In its Application, the Company noted that there are no customer deposits, and no
 19 refunds are due on meter and service line installations or pursuant to main extension agreements.

20 21. Staff testified that, although the City's rates are higher than Sue Juan's, Staff believes
 21 that they are not "exorbitant."¹⁴

22 22. Staff testified that Staff believes the transfer of assets from Sue Juan to the City is in
 23 the public interest.¹⁵

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 25 ⁸ Tr. at 14-15. Staff Report, Attachment C, Letters from City of Benson dated February 25, 2008, and March 3, 2008.

26 ⁹ Tr. at 15.

27 ¹⁰ Staff Report, Attachment C, Letter from City of Benson dated April 6, 2009.

28 ¹¹ Tr. at 15.

¹² Tr. at 15-16.

¹³ Tr. at 17-18.

¹⁴ Tr. at 20; Staff Report, page 3.

¹⁵ Tr. at 20.

23. Staff indicated that, according to an Arizona Department of Environmental Quality ("ADEQ") compliance report dated May 6, 2009, the City's water system was delivering water that met ADEQ water quality standards and regulations.

24. Staff reported that, according to an Arizona Department of Water Resources ("ADWR") Compliance Status Report dated March 19, 2009, ADWR determined that Sue Juan is no longer an active public water system and no longer regulated by ADWR.

25. In the Staff Report, Staff noted that the Company has no delinquent Commission compliance items.

Recommendations

26. Staff recommended approval of the Application subject to two conditions: 1) that Sue Juan should be required to file copies of the documents transferring its assets to the City; and 2) that Sue Juan should be required to file with Docket Control copies of the Notice of Well Capping filed with ADWR no later than June 30, 2011.

27. On the same day as the hearing, Sue Juan filed with Docket Control a copy of the Special Warranty Deed transferring its real property and system assets to the City. Consequently, Staff's first condition has been met.

28. Mr. Hamilton testified that the City would not begin the capping the wells until after July 1, 2011; therefore, we believe it is reasonable to modify Staff's second condition to require that Sue Juan must file a copy of the ADWR Notice of Well Capping with Docket Control, as a compliance item in this docket, no later than December 30, 2011.

29. Staff also recommended that the Commission's approval of the sale of assets to the City and the cancellation of Sue Juan's CC&N should be considered null and void, after due process, if Sue Juan fails to meet this condition.

30. Based on the record in this matter, we believe Sue Juan's Application for authority to transfer its water system and assets to the City, and to cancel its CC&N, is in the public interest and should be approved, subject to compliance with Staff's remaining recommendation, as modified herein.

31. A.R.S. § 40-285 requires a company to seek Commission approval prior to transferring

1 assets, but in this case we believe that the sale and transfer of the assets to the City was necessary in
2 order to address the arsenic problem with Sue Juan's wells.

3 **CONCLUSIONS OF LAW**

4 1. Sue Juan is a public service corporation within the meaning of Article XV of the
5 Arizona Constitution and A.R.S. §§ 40-281, 40-282 and 40-285.

6 2. The Commission has jurisdiction over Sue Juan and the subject matter of the
7 Application.

8 3. Notice of the Application was provided as required by Arizona law.

9 4. There is a continuing need for water utility service in Sue Juan's certificated area.

10 5. The City of Benson is a fit and proper entity that is ready, willing and able to assume
11 the responsibilities of providing water utility service within Sue Juan's existing certificated area.

12 6. Staff's recommendation to approve the Application, subject to compliance with its
13 sole condition, as modified, is reasonable and should be adopted.

14 **ORDER**

15 IT IS THEREFORE ORDERED that Sue Juan Water Company's Application for approval to
16 transfer its water system and assets to the City of Benson, and to cancel its CC&N, is in the public
17 interest and is hereby approved, subject to compliance with Staff's recommendation.

18 IT IS FURTHER ORDERED that Sue Juan Water Company shall file with Docket Control, as
19 a compliance item in this docket, no later than December 30, 2011, copies of the ADWR Notice of
20 Well Capping of Sue Juan's wells.

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1 IT IS FURTHER ORDERED that Sue Juan Water Company's sale of assets to the City of
2 Benson, and cancellation of Sue Juan Water Company's CC&N, shall be considered null and void,
3 after due process, if Sue Juan Water Company fails to meet the above-stated condition.

4 IT IS FURTHER ORDERED that this Decision shall become effective immediately.

5 BY ORDER OF THE ARIZONA CORPORATION COMMISSION.
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7

8 CHAIRMAN

COMMISSIONER

9
10 COMMISSIONER

COMMISSIONER

COMMISSIONER

11 IN WITNESS WHEREOF, I, ERNEST G. JOHNSON,
12 Executive Director of the Arizona Corporation Commission,
13 have hereunto set my hand and caused the official seal of the
14 Commission to be affixed at the Capitol, in the City of Phoenix,
15 this _____ day of _____, 2011.

16 _____
17 ERNEST G. JOHNSON
18 EXECUTIVE DIRECTOR

19 DISSENT _____

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21 DISSENT _____
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1 SERVICE LIST FOR: SUE JUAN WATER COMPANY

2 DOCKET NOS.: W-01521A-09-0121

3
4 Chester C. Antonick, Sr.
5 Tammy Curtis
6 SUE JUAN WATER COMPANY
7 10570 South Nogales Highway
8 Tucson, Arizona 85706

9
10 Glenn Nichols, City Manager
11 Michael Massee, City Attorney
12 CITY OF BENSON, ARIZONA
13 120 West 6th Street
14 Benson, Arizona 85602

15
16 Janice Alward, Chief Counsel
17 ARIZONA CORPORATION COMMISSION
18 1200 W. Washington Street
19 Phoenix, AZ 85007

20
21 Steven M. Olea, Director
22 Utilities Division
23 ARIZONA CORPORATION COMMISSION
24 1200 W. Washington Street
25 Phoenix, AZ 85007